

PRINCIPLE OF INSURABLE INTEREST

Insurable Interest means an interest which can be or is protected by a contract of insurance. This interest is considered as a form of property in the contemplation of law. It is only the presence of Insurable Interest that distinguishes a contract of insurance from a wagering contract and hence it is sine qua non for the validity of the contract of insurance. All the statutes say that an insurance contract will become a wagering contract and hence void if it is taken place without an insurable interest.

It is also defined as, “When the assured is so stipulate that the happening of the event on which the insurance money is to be payable would as an approximate result involve in the loss or determination of any right recognized by law or in any legal liability there is an insurable interest to the extent of the possible loss or liability.”

According to **E. W. Patterson**, “Insurable Interest is a relation between insured and the event insured against such as the occurrence of events will cause substantial loss or injury of some kind to the insured.”

According to **Rodda**, “Insurable Interest may be defined as an interest of such a nature that the occurrence of the event insured against would cause financial loss to the insured.”

According to **R. N. Ray**, “When the assured is so stipulated that the happening of the event on which the insurance money is to be payable would as a approximate result involved in the loss or diminution of any right recognized by law or any legal liability, there

is an insurable interest to the extent of possible loss or liability.”

In ***Lucena v. Craufurd***[1], **Lawrence J** defined insurable interest. In his words ‘Insurable interest’ means ‘if the event happens, the party will gain advantage, if it is frustrated, he will suffer a loss’.

CONCEPT OF INSURABLE INTEREST

The existence of insurable interest is an essential ingredient of any insurance contract. It is a legal right to insure arising out of a financial relationship recognized under law, between the insured and the subject matter of insurance.

The interest should not be a mere sentimental right or interest, for example love and affection alone cannot constitute insurable interest. It should be a right in property or a right arising out of a contract in relation to the property. The interest must be pecuniary i.e. capable of estimation in terms of money. In other words, the peril must be such that its happening may bring upon the insured an actual or deemed pecuniary loss. Mere disadvantage or inconvenience or mental distress cannot be regarded as an insurable interest but this rule not strictly followed in life insurance cases. The interest must be lawful, that is, it should not be illegal, unlawful, and immoral or opposed to public policy and does not harm any others legal justified claim.

Insurable interest means an interest which can be or is protected by a contract of insurance. In the case of ***Brahma Dutt v. LIC***[2], **Mukhtar Singha** petty school teacher on salary of Rs 20 took a policy for Rs

35,000 on his life making false statements in the proposal and nominated a stranger Brahma Dutt for the policy. The nominee paid the first two quarterly premiums by which time the life insured died. The nominee intimated the insured's death and claimed the sum assured. It was found on evidence that Brahma Dutt had taken the policy without any insurable interest in the life of the deceased for his own benefit and that therefore it was void being a wagering agreement.

Supreme court in case of ***Suraj Mal Ram Niwas Oil Mills (Private) Limited v. United India Insurance Company Limited & Another***[3], held that the objection of the insurer about the non-disclosure of dispatch of each and every consignment, as pointed by the second surveyor, learned counsel submitted that the said condition has to be understood in the context of the fundamental condition that the insurance cover was intended to secure only the 'insurable interest' of the appellant in the dispatches. It was urged that the appellant had declared only those consignments in which they had an "insurable interest" as in relation to dispatches which had not been declared, the consignees had desired that their consignments should be dispatched without an insurance cover.

In all such cases, the purchasers took the risk of loss to their goods, and hence the appellant had no "insurable interest" in them, unlike in the consignment in question for which due declaration was made. Reference was made to the decisions of this Court in ***New India Assurance Co. Ltd v. G.N. Sainani***[4] and ***New India Assurance Company Limited v. Hira***

Lal Ramesh Chand & Ors[5], wherein it was held that "insurable interest" over a property is "such interest as shall make the loss of the property to cause pecuniary damage to the assured and under this case it will make a damage to the interest of the insured.

HISTORY OF INSURABLE INTEREST

Essentially, the insurable interest requirement typically functions as a safeguard to an insurer allowing the insurer to justify nonpayment after a covered occurrence has taken place. If the insurer can successfully prove the insured lacked an insurable interest in the property, a court will hold the insurance contract is void on grounds of public policy. Prior to 1745, a pecuniary or emotional interest in the subject of an insurance policy was not a requirement for the receipt of a payout from that policy and Roche J observed that there is nothing in the common law of England which prohibits insurance even if no interest exists.

Thus, insurance contracts were held valid, notwithstanding that the absence of an insurable interest gave the transaction the characteristics of a wager.[6] In 1746, the English Parliament outlawed gambling contracts on marine insurance. And subsequently in 1774, Parliament extended this gambling prohibition to life insurance contracts as well. Accordingly, the original purpose of the doctrine was Parliament's attempt to remit the use of insurance contracts as a vehicle to gamble. The insurable interest doctrine developed in response to the common law's validation of such contracts in an effort to both prevent wagers on the lives of individuals and

to quell attempts to destroy the subject of an insurance policy.

WAGER AND INSURANCE CONTRACT

In a contract of wager all the parties does not have any interest in happening of the event other than the sum or stake he will win or lose. This is what marks the difference between a wagering agreement and a contract of insurance because every contract of insurance requires for its validity the insurable interest. Insurance affected without insurable interest is no more than a wagering agreement and therefore void. 'Insurable interest' means the risk of lose to which the assured is likely to be exposed by the happening of the event assured against. In a wager on the other hand neither party is running any risk of loss except that which is created by the agreement between two or more than two parties.

We all also know that wagering is illegal in India and against to the norms of society or in short wagering is against public policy and distinction between a insurance and a wager is that a insurance is properly speaking a contract to indemnify the insured in respect of some interest which he has against perils which he contemplates it will be liable to.

In case of ***Alamani v. Positive Govt. Security Life Insurance Co***[7] the plaintiff's husband took a policy of insurance on the life of Mehbub Bi, the wife of a clerk working under him and about a week later got the policy assigned in the favor of the plaintiff, Mehbub Bi died a month later and the plaintiff as assignee claimed the sum assured and in this case court find that there was no insurable interest present in this

case and hence this insurance contract held to be contract of wager and held to be void.

NATURE OF INSURABLE INTEREST

The court in *Castellain v Preston*[8] stated that an insured's insurable interest is the object of the insurance and that only those who have an insurable interest can recover. To this, the court added that an insured could recover only to the extent to which his insurable interest had been impaired by the insured peril.

In *Lucena v. Craufurd*[9], it has been pointed out that the interest must be enforceable by law. Mere hope, however strong it may be, is not sufficient.

There is a requirement that an insurable interest must be in the nature of a legal right or liability. The insured must have a legal or equitable relation to the object insured. In *Macaura v Northern Assurance Co Ltd*[10] Macaura insured a quantity of timber in his own name. The timber was owned by a company in which Macaura was the sole shareholder. It was held that the shareholder had no insurable interest in the assets of a company because he stood in no legal or equitable relation to the timber insured in his name which was the sole asset of the company. Here it is the company that possesses the insurable interest and Macaura's claim failed for a lack of insurable interest even though he was financially prejudiced when the property was destroyed.

TYPES OF INSURABLE INTEREST

There are basically two types of insurable interest: (1) Contractual (2) Statutory

1. **Contractual**: If the insurable interest is absent, the insurance contract is illegal or void and no agreement between the parties dispensing with this requirement can be effective. Contractual insurable interest is an interest which is being required by contract of insurance by itself. In an action upon such a contract if the insurer does not raise the plea of want of interest nevertheless the court of its own motion may refuse to enforce the contract.
2. **Statutory**: As we have seen in some cases that interest in the subject matter of insurance is required by law itself for the validity of the policy, whether by express statutory law as in the Marine Insurance Act 1906 or as by section 30 of the Indian Contract Act which merely declares that all contracts by way of wager is void. This is the interest required by statute.

CREATION OF INSURABLE INTEREST

There are three ways by which insurable interest will arise or can be created. Which are given below:—

- **BY COMMON LAW**: Where the essential elements of insurable interest are automatically present, the same can be described as having arisen at common law. The most straight forward example is ownership. One can own a house, and therefore there is entitlement to insure it. Like the use or driving of a motor vehicle in a public place is sufficient insurable interest for the purpose of effecting insurance in the favor of the third party.

.BY CONTRACT: In some contracts a person will agree to be liable for something, which he or she would not ordinarily be liable for. A landlord is normally liable for the maintenance of property he owns rather than the tenants. A lease may, however, make the tenant responsible for the maintenance, repair etc. of the building. Such a contract places the tenant in legally recognized relationship to the building. This gives him an insurable interest, which would not be present if the contract had not been entered into so these kinds of special contractual relationships give arise to the insurable interest on something on which otherwise one does not have any kind of insurable interest.

.BY STATUTE: Some time an act of parliament will create an insurable interest either by granting some benefit or imposing a duty. While the statute may create insurable interest where none would otherwise exist. There can be some statutes which can restrict liability and thereby also restrict insurable interest. Like compulsory insurance of the employees by the employer of a company.

WHEN INSURABLE INTEREST MUST EXIST

The time when the insurable interest must be present varies with the nature of the insurance contracts. The question is whether insurable interest should exist at the time when the contract is formed or should it also continue to exist until it is discharged but as we have seen in life insurance the presence of insurable interest is necessary at the commencement of the policy although it is not necessary afterwards, not even

at the time of occurrence of risk. So it should be there in life insurance policies at the time of taking the policy it need not exist at the time when the loss take place or even when the claim is made under the policy. Life insurance contracts are not strictly speaking contracts of indemnity. In case of ***Dalby v. India and London Life Insurance Co.***[11] Court held that the insurable interest should be present at the time of the contract though not at the time of the loss in life insurance policies.

In fire insurance it is required both at the commencement of the policy and at the time when the risk occurs. In a sense, therefore it may be said that insurable interest is doubly insisted upon in fire insurance. The insurance interest is necessary at both the times because it is treated as a personal contract and also a contract of indemnity. And even the onus that the fire was intentional is on the insurer not on insured. The insurance interest required both at the commencement of the policy and at the time when the risk occurs in motor insurance also.

In a marine insurance contract the presence of insurable interest is necessary only at the time of the loss. It is immaterial whether he has or does not have any insurable interest at the time when the marine insurance policy was taken.

INSURABLE INTEREST IN LIFE INSURANCE

The general rule is that every person has an insurable interest in his own life. Accordingly, a person may purchase a life insurance policy on his own life, making the proceeds payable to anyone he wishes. Life insurance contract is not a contract of indemnity and a

person affecting a policy must have an insurable interest in the life to be assured. But when a person seeks insurance on his own life, the question of insurable interest is immaterial. Every person is presumed to have insurable interest in his own life without any limitation. Every person is entitled to recover the sum insured whether it is for full life or for any time short of it. If he dies, his nominee or dependents are entitled to receive the amounts.

In case of ***Liberty National Life Insurance v. Weldon***[12], the aunt of the of a two year old child who was a nurse by profession, managed 3 life insurance policies by different 3 companies on the life of the child. One day she mixed some poisonous thing into the milk and by that milk child was died. And the lady claimed a huge amount from three companies. The father filed a case against all the insurance companies that without knowing the fact that whether she had any insurable interest in the life of child they issued the life insurance policies. In this case Court held that the aunt has no insurable interest in the life of child therefore the companies were not liable but the companies are liable to pay compensation to father of the child.

In the life insurance policy persons having relationship by marriage, blood or adoption have been recognized as having insurable interest.

Few example of relationship which has insurable interest in the life of other:—

1. **Husband and Wife**: Husband and wife have an insurable interest of life of each other. In case of ***Griffith v. Flemming***[13], Griffith and his wife

each signed a proposal form for a joint life policy on their life and both contributed towards the premium. After the policy was taken, the wife committed suicide and the husband claimed the sum assured. The insurer alleged that at the time of taking the policy the husband had no insurable interest in his wife's life as required by the Life Assurance Act, 1774. In this case Vaughan Williams L.J. held that 'the husband has an interest in his wife's life which ought to be presumed'.

2. **Child and Parents:** In England only children have an insurable interest on the life of parents, but parents do not have any insurable interest in life of the child. But in India Child and parents both have the insurable interest in life of each other. In case of *Halford v. Kymer*, [14] it was held that a father has no insurable interest in the life of his son unless he is getting some pecuniary benefit from him.
3. **Debtor and Creditor:** Creditor has the insurable interest on life of the debtor to that extent on which amount he has the position to recover from debtor. It was held in case of *Godsall v. Boldero* [15], that if a creditor affects a policy of insurance upon the life of his debtor for greater amount than due, then he will not be able to recover any greater sum than the amount or value of his interest. In *Beauford v. Saunders* [16], it was held that if the debt has been guaranteed by a surety, the creditor will have interest in the life of the surety as well.

4. **Bailor and Bailee**: A bailor has an insurable interest in the property bailed to the extent of possible loss. The bailor has a potential loss from two sources. Compensation as provided for in the contract of bailment might be lost. Second, the bailee may be held legally liable to the owner if the bailee's negligence cause the loss.
5. **Mortgagee and Mortgagor**: The mortgagee has an insurable interest in the life of mortgagor to the extent of the property mortgaged.
6. **Employer and Employee**: An employee has an insurable interest in his employer's life to the extent of his salary as held in case of *Hebdon v. West*[17].

INSURABLE INTEREST IN NON-LIFE INSURANCE

For all the insurance policy other than life insurance, the person taking the insurance policy must have an insurable interest in the property insured. Insurable interest is not confined to legal ownership only but there are certain other conditions when a person other than a legal owner has the insurable interest in the property. Which are described as under different policies of insurances:—

MARINE INSURANCE: Insurable interest is a special requirement of the marine insurance contract and any valid contract of marine insurance can be entered into by person only if he has insurable interest in the marine adventure. And what is important for insurable interest is that (1) there should be a physical object which is exposed to the marine perils and (2) the assured must have some legally recognized relationship with that object in consequences of which

he benefits by its preservation and is prejudiced by its loss or damage.

In **Wilson v. Jones**[18], it was held that a contingent buyer of goods, who has not obtained property, risk or possession, has no insurable interest in the goods themselves even though he expects at a future date to acquire it.

FIRE INSURANCE: 'A contract of fire insurance, like all other contracts of insurance, requires an insurable interest in the subject-matter of the insurance to support it; in the absence of an insurable interest, the assured can suffer no loss, and the contract becomes a mere wager.'[19] In fire insurance, a person is said to have interest in a property if he is liable to suffer a direct loss upon its destruction. But a person who is so connected with a property that he might suffer loss upon its destruction may not be said to be interested in it. As the House of Lords in case of **Macaura v. Northern Assurance Co.**[20] ruled that neither a shareholder nor a simple creditor of a company has any insurable interest in any particular asset of the company although both the shareholder and creditor may suffer loss upon destruction of their company's property.

Few example of peoples those can have insurable interest in any insured property by fire.

- Owner of the property, joint owner, sole owner, or a firm owning the property.
- Lessor and lessee both have insurable interest on any property.

- The vendor and the purchaser both have the insurable interest.
- The mortgagor and mortgagee.
- Trustees are legal owners and beneficiaries or the beneficial owner of the trust property and each can insure it.
- Bailees such as carriers, pawnbrokers or warehouse men are responsible for the safety of the property entrusted in them and so can insure it.

OTHER PROPERTY INSURANCE: In other types of insurance policies such as burglary insurance, flood insurance, vehicle insurance, agricultural insurance etc. the person making the insurance policies must have the insurable interest in the property being insured at the time of the taking policies.